IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/03/2004

CORAM

THE HONOURABLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.888 of 1997

1. Radha alias Radhakrishnan
2. Selvaraj ... Appellants /
3. Shivaji Accused 1 to 3

-Vs-

State by
Inspector of Police,
Mannachanallur Police Station,
Trichy District . ... Respondent.

Criminal Appeal against the judgment dated 22.10.1997 made in S.C.No.231 of 1996 on the file of I Additional District and Sessions Judge - cum - Chief Judicial Magistrate, Trichy.

!For appellants : Mr.S. Shanmugavelayutham

^For respondent : Mr. A.N.Thambidurai,
Government Advocate.
(Crl. Side)

:J U D G M E N T

Accused 1 to 3 in S.C.No.231 of 1996 on the file of I Additional Sessions Judge / Chief Judicial Magistrate, Trichy are the Appellants. By the Judgment dated 22.10.1997, Appellants / Accused 1 to 3 are convicted for the offences under Ss.34 .P.C. and sentenced to undergo imprisonment.

2. Gist of the Charges framed against the Appellants / Accused 1 to 3 and finding / sentence of the Trial Court is as noted below:-

Charge Number
(1)
Gist of the Offence
(2)
Against which accused
(3)
Finding

(4)
1
Under Ss.342 and 302 r/w 34 I.P.C. for
Wrongful confinement and committing the murder of Govindan.
A1
Convicted under Sec.342 I.P.C and sentenced to undergo Rigorous Imprisonment for one year and fine of Rs.1,000/-.

Convicted under Sec.323 I.P.C and sentenced to undergo Rigorous Imprisonment for one year and fine of Rs.1,000/-.

Acquitted under Sec.302 r/w 34 I.P.C.
2
Under Ss.342 and 302 r/w 34 I.P.C. for
Wrongful confinement and committing the murder of Govindan.

A2
Convicted under Sec.342 I.P.C and sentenced to undergo Rigorous Imprisonment for one year and fine of Rs.1,000/-.

Convicted under Sec.323 I.P.C and sentenced to undergo Rigorous Imprisonment for one year and fine of Rs.1,000/-.

Acquitted under Sec.302 r/w 34 I.P.C.

3
Under Ss.342 and 302 r/w 34 I.P.C. for
Wrongful confinement and committing the murder of Govindan.
A3

Convicted under Sec.342 I.P.C. and sentenced to undergo Rigorous Imprisonment For one year and fine of Rs.1,000/-.

Acquitted under Sec.302 I.P.C.

3. Case of the prosecution could briefly be stated thus:-
Deceased Govindan is the husband of P.W.1 - Balammal. P.W.4 - Perumal is the son of deceased Govindan and P.W.1. P.W.3 - Balammal is the wife of P.W.4. P.Ws.1, 3 and 4 are residen panchali Village. A.1 to A.3 also belong to the same Village.

4. Occurrence. On 11.10.1995 - 12.00 noon, one khl;L tpahghhp Ramu had scolded deceased Govindan abusing him. Enraged over the same, Govindan beat the said khl;L tpahghhp Ramu, who sustained bleeding injuries on his head. On seeing Govin Ramu, the Accused 1 to 3 got infuriated. Govindan went inside the house. At that time, A.1 - Radha @ Radhakrishnan went inside the house of Govindan and brought him out. A.1 and A.3 - Shivaji tied Govindan to a Flag Post. A.1 and A.2 - Selvaraj beat him with hands. Govindan fainted on the Post itself. But A.2 instructed others not to give him any water till the matter between him and Ramu is settled.

This incident was witnessed by P.W.5 - Ponnan and P.W.6 - Periasamy (who turned hostile).

5. P.Ws.1, 3 and 4 came and pleaded A.1 to A.3 to untie Govindan. A.1 to A.3 directed them to pay a fine of Rs.1,000/- for beating Ramu. P.W.4 - son of deceased Govindan borrowed Rs.900/- from the Villagers and paid the amount. The said ed the same and executed Ex.P.5 - Muchalika stating that he would not further proceed with the matter. After the money was paid, Govindan was untied. When he was untied, Govindan was in the fainting stage. He was brought to his house and made to lie d own on the Pial. In the whole night, Govindan was asking for water. Next day morning, Govindan died of injuries.

6. Complaint and Registration of F.I.R. On 12.10.1995 - 12.00 noon, P.W.1 went to P.W.7 - Village Administrative Officer. Her Statement - Ex.P.1 was recorded. The same was forwarded to Mannachanallur Police Station along with Ex.P.9 - Re Village Administrative Officer (P.W.7). On the basis of Ex.P.1 - Complaint, P.W.10 - Sub Inspector of Police, Mannachanallur registered a case in Crime No.685 of 1995 under Ss.342 and 302 I.P.C. under Ex.P.11 - First Information Report.

7. Investigation. P.W.11 - Inspector of Police had taken up the investigation. He inspected the scene of occurrence in the presence of P.W.7 - Village Administrative Officer. Ex.P.8 - Observation Mahazar and Ex.P.12 - Rough Plan were pre 12.10.1995 - 4.30 p.m., P.Ws.1, 3, 4 and 7 and other witnesses were examined in the presence of Panchayatdars and inquest was held. Ex.P.13 is the Inquest Report. After inquest, body was sent to Autopsy with Ex.P.2 - requisition.

8. Post-mortem. Pursuant to the requisition - Ex.P.2 from the Inspector of Police, P.W.2 - Dr.Thiagarajan, attached to Srirangam Government Hospital had conducted Autopsy. He has noted ..

Contusions .. Around the right wrist linear
around the wrist, in the right
loin 3 in number, in the right
scapula, in the left side of
the face frontal region up to
the left eye.

Lacerated .. In the back of right elblow,
Injuries in the anterior aspect of
right knee, in the right side
of forehead

Liner Abrasion.. Around the left wrist.

Skin absent from the right to left scapula and back of the hand from elbow to wrist.

On internal examination he found skull fracture in the left frontal and temporal region in the left. Brain congested in the above region 20 ml of blood seen in the base of the skull. Opining that deceased Govindan died of shock and haemorrhage due to t he fracture of left frontal and temporal region, P.W.2 issued Ex.P.3 - Post-mortem Certificate.

9. Arrest of the Accused. On 13.10.1995 - 5.00 a.m., A.2 was arrested in Moovanoor Road - Musiripulivalam Road Junction in the presence of P.W.7 - Village Administrative Officer. On being interrogated, A.2 had voluntarily given confession Admissible portion of his Confession Statement (Ex.P.6) led to the recovery of M.O.2 - rope. Panchayat Muchalikas - Exs.P.4 and P.5 were also seized under Ex.P.7 - Mahazar.

10. P.W.12 - Inspector of Police had taken up further investigation. He has examined Dr.Siva, who had given First Aid Treatment to the head injuries sustained by Govindan. On completion of investigation, Charge Sheet was filed against the o 3 under Ss.342 and 302 r/w 34 I.P.C.

11. To substantiate the charges against the Accused, in the Trial Court P.Ws.1 to 12 were examined. Exs.P.1 to 13 were marked. M.Os.1 and 2 were produced. The Accused were questioned about the incriminating circumstance and evidence under l.P.C. The Accused denied all of them and pleaded that a false case is foisted against them.

12. Upon consideration of the evidence, the Trial Court accepted the evidence of P.Ws.1, 3 and 4 that the Accused had tied Govindan to Flag Post and that they had beaten Govindan. The Trial Court also found that the attack on Govindan was u ed and that on seeing Ramu (khl;Lj; jufh;) being beaten by Govindan, enraged over the same, the Accused reacted to the same by beating Govindan with hands. Referring to the medical evidence that the death was due to skull bone fracture, the learned Sess ions Judge found that the oral evidence explaining the skull bone fracture is wanting and on those reasonings acquitted the Accused under Sec.302 r/w 34 I.P.C; but found them guilty under Ss.342 and 323 I.P.C. and sentenced them to undergo imprisonment a nd imposed fine as noted above in para No.2.

13. Aggrieved over the conviction, the Appellants / Accused 1 to 3 have preferred this appeal. Assailing the reliability of the evidence of P.W.1 - Balammal, the learned counsel for the Appellants / Accused 1 to 3 contended that the evidenc suffers from improvements and that Ex.P.1 - Complaint is brought out after much deliberation. The case of prosecution is assailed mainly on the ground that there is no oral evidence as to the fatal injuries - skull bone fracture. Much arguments are adv anced attacking Ex.P.1 - Complaint that it does not contain the truthful version and that the prosecution case suffers from several infirmities and the benefit of which ought to be given to the Appellants / Accused 1 to 3. Placing reliance upon the case of State of Karnataka v. Muddappa (1999 Supreme Court Cases (Cri) 1046) the learned counsel urged to invoke the provision of Probation of Offenders Act or to invoke Sec.360 Crl.P.C. for admonition.

14. Countering the arguments of the Appellants / Accused 1 to

3, the learned Government Advocate has taken me through the evidence and submitted that the inhuman attack on the deceased is well spoken by P.Ws.1 and 3. Contending that the App ccused 1 to 3 had far exceeded their limit in causing injuries, the learned Government Advocate submitted that there is no reason warranting interference in the conviction. However, learned Government Advocate assailed the findings of the Trial Court in acquitting the Appellants / Accused 1 to 3 under Sec.302 r/w 34 I.P.C. and submitted that by all reasonable standard of appreciation of evidence the Appellants / Accused 1 to 3 ought to have been convicted under Sec.304 (II) I.P.C.

15. Upon careful analysis of the evidence, judgment of the Trial Court and submissions of both sides, the following points arise for determination in this appeal:-

(i) Whether Appellants / A.1 to A.3 are proved to be responsible for the fatal injuries sustained by deceased Govindan ?
(ii) Whether conviction and sentence of imprisonment under Ss.341 and 323 I.P.C. warrant any interference ?
16. One Ramu (khl;Lj; jufh;)of Muttam Village had come down to Thirupanchali Village on 11.10.1995. The details of enmity between deceased Govindan and Ramu is not discernible from the evidence available on record. Suffice it to point o about 11.10.1995 - 12.00 noon, the said Broker Ramu had hurled abuses on Govindan. Enraged over the same, deceased Govindan beat Broker Ramu on his head who sustained bleeding injuries on his head. On seeing and enraged over the same, Appellants / Accu sed 1 to 3 are said to have reacted in tying Govindan. P.Ws.1 and 3 (wife and daughter-in-law of Govindan) had clearly spoken about the preluding occurrence - Govindan beating Ramu. Regarding this prior occurrence, there was also a Panchayat. In the s aid Panchayat, an amount of Rs.900/- was settled towards medical expenses of Broker Ramu and also as the compensatory amount for sustaining injuries by him. Ex.P.5 is the Muchalika executed by the said Ramu attested by A.2 and A.3 and also other Village rs. Simultaneously, another Muchalika - Ex.P.4 was obtained from Govindan and P.W.4 - Perumal (Son of Govindan) under which they have consented for the decision of the Panchayatdars. Thus the prior occurrence is well proved by the evidence of P.Ws.1 an d 3, which is strengthened by the evidence of P.W.4 and Exs.P.4 and P.5.
17. P.Ws.1 and 3 have clearly spoken about the overt act of Appellants / A.1 and A.2. A.1 brought Govindan from out of his house; A.3 brought M.O.2 - rope and A.1 and A.2 tied Govindan to a Flag Post and beat him with their hands. Govinda n the Post. A.2 instructed not to give water to him (Govindan). Evidence of P.W.1 and P.W.3 on the overt act of A.1 to A.3 is cogent and convincing.

18. P.W.4 - Perumal went to Trichy and came back at about 2.00 p.m. on 11.10.1995. He has not witnessed the prior part of the occurrence. But witnessed only the later part of the occurrence i.e., seeing his father being tied to the Post. evidence relates to the later part of the occurrence, evidence of P.W.4 substantially corroborates the evidence of P.Ws.1 and 3.

19. P.Ws.1, 3 and 4 are related to deceased Govindan.

Evidence of P.W.1 is assailed on the ground that her evidence suffers from improved version. Evidence of P.Ws.1, 3 and 4 cannot be doubted merely on the ground that they are related wi f they are related, their evidence is to be viewed with care and caution. As noted earlier, their evidence is substantially corroborated by execution of Panchayat Muchalikas - Exs.P.4 and P.5. Their evidence remains unshaken despite lengthy cross-exami nation.

20. Evidence of P.W.1 and prosecution case are mainly attacked on the ground of delay in registration of First Information Report. The occurrence was on 11.10.1995 - 12.00 noon. P.W.1 went to the Village Administrative Officer (P.W.7) onl 1995 at about 12.00 noon. The case in Crime No.685 of 1995 was registered at 1.00 p.m. Pointing out the delay in registration of First Information Report, it is mainly contended that Ex.P.1 - Complaint is of much deliberation and does not contain the tr uthful version. It is submitted that in all probabilities Ex.P.1 - Complaint must have been brought into existence after the Appellants / Accused 1 to 3 were taken to custody. This argument is sought to be strengthened on certain answers elicited from P.Ws.1 and 3 that they have identified the Accused before the Police on the date on which P.W.1 gave complaint. The delay aspect does not in any way undermine the credibility of the prosecution case. The family of deceased Govindan hailing from Sri Lan ka, is settled in Thirupanchali. The family members have noticed the death of Govindan only on the morning of 12.10.1995. P.W.1 and her family members might not have reported the attack on Govindan on 11.10.1995 for the fear of being booked for attack of Ramu by Govindan. Besides, the family of P.W.1 are unsupported by others. It is relevant to note that the independent witnesses, viz., P.Ws.5 and 6 of the same Village cited as eye witnesses have turned hostile. In that circumstance, Ex.P.1. - Comp laint given at 12.00 noon on 12.10.1995 cannot be said to be an unreasonable delay, undermining the credibility of the prosecution case.

21. A.2 was arrested on 13.10.1995 - 5.00 a.m. in Moovanoor Road - Musiripulivalan Road Junction. As noted earlier, it is elicited from the Cross-examination of P.Ws.1 and 3 that they have identified the Accused before the Police on the da they gave Ex.P.1 - Complaint. On the strength of the above answers, Ex.P.1 - Complaint is assailed stating that it is the outcome of deliberation after the Accused were taken to custody. By reading of the Cross-examination of P.W.1 - Balammal, it is s een that P.Ws.1 and 3 have stated that they have identified the Accused before the Police at the fag end of her Cross-examination. Perhaps, prosecution witnesses might have answered 'Yes' for the questions put to them. No weight could be attached to th at answer to doubt the consistent evidence of P.W.11 - I.O. and P.W.7 - Village Administrative Officer on the arrest of A.2 on 13.10.1995 and the arrest of other Accused.

22. P.W.1 has admitted that deceased Govindan was in the habit of drinking. In Ex.P.5 - Muchalika also it is stated " fnzrg[uj;jpy; g!;!%f;fhff; fhj;jpUe;jnghJ nf/nfhtpe;jd; vd;gyh; Fonghijapy; vd;id jhf;fpdhh; ////". It is suggested that ad beaten Ramu and has also taken away Rs.900/-

from him for drinking. This suggestion that Govindan had beaten Ramu without any purpose is quite improbable. It is contended that the overt act attributed to A.1 and A.2 is that they had beaten Govindan only with hands, whereas Govindan died of skull bone fracture. As Govindan was in the habit of drinking and an aggressive man, it is contended that he might have fallen elsewhere and might have sustained head injuries. This contention lacks in substanc e. During the Cross-examination no foundation was laid for this suggestion. The consistent evidence of P.Ws.1, 3 and 4 cannot be doubted. Further it is well brought out on record that after he was untied, Govindan became semi-conscious and was repeat edly asking for water and was made to lie down in the Pial. While so, there was no possibility of Govindan falling elsewhere and sustaining head injuries.

23. On seeing deceased Govindan beating Ramu, Appellants / A.1 to A.3 questioned the conduct of the deceased as to the attack on Ramu. Conduct of the Appellants / Accused 1 to 3 appears to be natural in reacting to the extent of questioni . But their further conduct in asking Govindan from out of his house and tying him to a Flag Post and refusing to untie him is nothing but excessive reaction. In the Panchayat, an amount of Rs.900/- was settled towards medical expenses of Ramu. P.Ws.1 , 3 and 4 did not have the money. They have to borrow the same to comply with the direction of the Accused. Deceased Govindan had not taken food from the morning. While so, A.1 to A.3 persisted in not releasing him. Thus A.1 to A.3 had taken law into their hands in tying Govindan and beating him. While so, the conviction of A.1 to A.3 under Sec.323 I.P.C. is perse erroneous. Taking note of the nature of injuries and manner of attack, the learned Sessions Judge ought to have convicted the Appellants / Accused for culpable homicide not amounting to murder.

24. From Ex.P.3 - Post-mortem Certificate, it is seen that the deceased Govindan sustained ...

Contusions .. Around the right wrist linear
around the wrist, in the right
loin 3 in number, in the right
scapula, in the left side of
the face frontal region up to
the left eye.

Lacerated .. In the back of right elblow,
Injuries in the anterior aspect of
right knee, in the right side
of forehead

Liner Abrasion.. Around the left wrist.

Death was due to shock and haemorrhage due to the fracture of left frontal and temporal region. In their oral evidence, P.Ws.1 and 3 have stated that A.1 and A.2 had beaten deceased Govindan with hands. While A.3 tied him with M.O.2 - rope, no specific overt act is attributed to A.1 and A.2 for beating on the head of Govindan. The oral evidence is not clear on the head injuries sustained by Govindan. This seems to have weighed substantially in the mind

of the Trial Court to acquit the Appellants / A ccused 1 to 3 under Sec.302 r/w 34 I.P.C. Govindan was tied to the Post. When he was beaten with hands, there is every possibility of his head hitting against the Post in the Occipital region and in the temporal region and there is every possibility of injuries being caused to the head by hitting against the Post. This aspect was not taken note of by the learned Sessions Judge. The analysis of evidence by the Trial Court is perse erroneous. The learned Sessions Judge ought to have punished the Appe llants / Accused 1 to 3 under Sec.304 (II) I.P.C. - culpable homicide not amounting to murder. There is no appeal preferred by the State against the acquittal of the Appellants / Accused 1 to 3 under Sec.302 r/w 34 I.P.C. At this distance point of time , it may not be appropriate to issue notice to the Appellants / Accused 1 to 3 to alter the sentence and to enhance the punishment.

25. Govindan was tied to the Post and beaten. He sustained injuries on his left wrist; contusions and abrasions are found all over the body and also he sustained head injuries. P.W.2 - Dr.Thiagarajan, who conducted the Autopsy, in his sta r Sec. 161 (3) Crl.P.C. has only stated about the injuries on the body of deceased Govindan and about the factum of issuing of Post-mortem Certificate. In his statement under Sec. 161(3) Crl.P.C., P.W.2 has not elaborated the injuries, particularly the head injuries. The Investigating Officers (P.Ws.11 and 12) ought to have examined the Doctor and brought forth the cause of death. Deceased Govindan was inhumanly done to death. In the case of State of Bihar v. P.P.Sharma (1991 Criminal Law Journal p age 1438), the Supreme Court has well pointed out the importance of the role of the Investigating Officers and that only by their action the law becomes an actual positive force and held thus:-

" The investigating officer is the arm of law and plays pivotal role in the dispensation of criminal justice and maintenance of law and order. The police investigation is, therefore, the foundation stone on which the whole edifice of criminal trial ts - an error in its chain or investigation may result in miscarriage of justice and the prosecution entails with acquittal. The duty of the investigating officer, therefore, is to ascertain facts, to extract truth from half - truth or grabbed version, connecting the chain of events. Investigation is a tardy and tedious process. Enough power, therefore, has been given to the police officer in the area of investigatory

process, granting him or her great latitude to exercise his discretionary power to make a successful investigation. It is by his action that law becomes an actual positive forces."

Duty was cast upon the Investigating Officers to ascertain from the Doctor connecting the injuries with the occurrence. Because of lack of thoroughness, the chain of evidence is missing. The omission on the part of the Investigating Officer in not coll ecting evidence from the Doctors connecting the head injuries with the occurrence resulted in punishing the Accused for lesser offence.

26. The inconsistencies pointed out in the evidence of P.Ws.1

to 3 are so trivial that they do not undermine the reliability of P.Ws.1 and 3, nor do they affect the veracity of the prosecution case. The finding of guilt and conviction of th s / Accused 1 to 3 are to be sustained. The Trial Court had shown extreme leniency in punishing the Appellants / Accused 1 to 3 for a lesser offence and imposing meager sentence of one year Rigorous Improvements and fine of Rs.1,000/-.

27. The learned counsel for the Appellants / Accused 1 to 3 relied upon the case of State of Karnataka v. Muddappan (1999 SCC (Cri) 1046) and prayed for invoking the provisions of Probation of Offenders Act or to release the Appellant / Ac 3 on admonition under Sec.360 Crl.P.C. As discussed earlier, the Appellants / Accused 1 to 3 had taken law into their hands and attacked Govindan in an inhuman manner. Only because of the lack of thoroughness in the investigation and the erroneous appr oach adopted by the Trial Court, the Appellants / Accused 1 to 3 are let off with conviction for lesser offence. Considering the facts and circumstances, it would be unjust to invoke the provisions of Probation of Offenders Act. This appeal has no meri ts and is bound to fail.

28. For the reasons stated above, the Judgment of I Additional District Judge - cum - Chief Judicial Magistrate, Trichy in S.C.No.231 of 1996 (dated 22.10.1997) convicting Appellants / Accused 1 to 3 under Ss.342 and 323 I.P.C. and the sent risonment and quantum of fine are confirmed and this appeal is dismissed. The Trial Court is directed to take immediate steps for securing the Accused to commit them to prison for serving the remaining period of sentence.

Index:Yes
Internet:Yes
sbi

To

1. The Additional District Judge -cum-
Chief Judicial Magistrate, Trichy.

2. The District and Sessions Judge,
Trichy.

3. The Superintendent,
Central Prison, Trichy.

4. The Inspector of Police,
Mannachanallur Police Station,
Tricy District.

5. The Public Prosecutor,
High Court, Madras.